RECENT IMPORTANT DECISIONS

AGENCY—AUTHORITY TO APPOINT SUB-AGENTS.—J purchased a note and mortgage of F and left the same in his hands for collection. F resided in New Hampshire, the mortgagor in Nebraska. F had negotiated the original loan through one B of Lincoln, Nebraska, and had received several payments through him after the assignment. B finally collected the last installment of the note and failed to turn over the proceeds. J, the holder, transferred the note and mortgage after maturity to the plaintiff, who brings suit to foreclose. *Held*, that the plaintiff must fail because F, from necessity, had implied authority to appoint B as a sub-agent to receive payment. *Breck* v. *Meeker*, (1903), — Neb. —, 93 N. W. Rep. 993.

The rule is too well settled for dispute that, as an exception to the general rule that agents have no power to appoint sub-agents, (*Ruthven* v. *American Fire Ins. Co.* (1894), 92 Ia. 316, 60 N. W. 663; *Connor* v. *Parker*, 114 Mass. 331;) authority so to act may be implied from necessity arising out of the circumstances of the parties; *Appleton Bank* v. *McGilvray*, 4 Gray (Mass.) 518, 64 Am. Dec. 92; *Planters' etc. Nat'l Bank* v. *Wilmington First Nat'l Bank*, 75 N. C. 534.

AGENCY—RIGHT TO COMPENSATION.—*Held*, that the fraud of the agent committed in the performance of his duty deprives him of his right to compensation. *Jeffries* v. *Robbins* (1903), — Kans. —, 71 Pac. Rep. 852.

See I MICHIGAN LAW REVIEW, pp. 505 and 671, where matter is discussed.

BANKRUPTCY—DISCHARGE.—The bankruptcy act of 1898, sec. 17, provides that a discharge shall release the bankrupt from all provable debts except . . . (4) where created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in a fiduciary capacity. Where a debt was created by fraud of the bankrupt, *Held*, he was liable although he was not acting as an officer or in a fiduciary capacity. *Crawford* v. *Burke* (1903), — Ill. —, 66 N E. Rep. 833.

This decision is based on the peculiar construction of the fourth paragraph of section 17. The exact question was whether or not the clause "while acting as an officer or in a fiduciary capacity" referred to each of the words "fraud, embezzlement, misappropriation or defalcation" or whether it attached only to the last named. The court held that the clause modified only the word "defalcation" and had no application to the words "fraud," "embezzlement," or "misappropriation." This important section has not yet been construed by the supreme court of the United States, but it has received judicial construction in other federal and some state courts. The principal case is the best one holding as it does. Other cases to the same effect are, *Frey* v. *Torrey*, 75 N. Y. Supp. 40, 8 Am. Bankr. Rep. 196; *In re Lieber*, 3 Am. Bankr. Rep. 217; *Bracken* v. *Milner*, 104 Fed. 522, 5 Am. Bankr. Rep. 23. The contrary construction is placed on the act in *In re Bullis*, 7 Am. Bankr. Rep. 238; *Morse* v. *Kaufman*, 4 Va. Sup. Ct. Rep. 172, 7 Am. Bankr. Rep. 549; *Gee* v. *Gee*, 84 Minn. 384, 7 Am. Bankr. Rep. 500; *In re Rhutassel*, 96 Fed. 597, 2 Am. Bankr. Rep. 697.

BANKRUPTCY—DISCHARGE—Section 17, subdivision 3, of the bankruptcy act of 1898 provides that a discharge in bankruptcy shall release the debtor from all his provable debts, except such as "have not been duly scheduled in time for proof and allowance, with name of the creditor, if known to the

bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy." Section 57, subdivision "n," enacts that a claim may be proved against the estate at any time within one year after adjudication. Where a voluntary bankrupt scheduled a debt in the name of the payee, knowing at the time that it had been discounted by the bank, in an action on the note, *Held*, that the bank could recover although it had knowledge of the discharge in sufficient time to have proved its claim under section 57. *Columbia Bank* v. *Birkett* (1903), — N. Y. —, 66 N. E. Rep. 652.

The contention of the defendant was that although the bank had no notice or actual knowledge of the bankruptcy proceedings prior to the discharge yet it did have knowledge in sufficient time, to have proved the claim and therefore this debt was not within the exception provided in subdivision 3 of section 17. There is no precedent applicable to this case in the respect of construing these two sections conjunctively, but if the act is read with the intent of giving effect to every portion, it must be conceded that there is considerable merit in the conclusions of the dissenting opinion.

BANKS AND BANKING—CREDITING DEPOSITOR—CHECK OF ANOTHER DEPOSITOR.—One McCann drew to the order of, and delivered to, the plaintiff, two checks on defendant bank. Plaintiff, who was also a depositor in the same bank, took the check to defendant, and deposited them, receiving credit therefor in his pass book. At the time plaintiff made this deposit, McCann had credit upon defendant's books for an amount in excess of these checks. But the greater part of this credit was made up by his deposit of two checks made payable to his order and drawn on another bank by Meyers & Co. After the deposit by the plaintiff, defendant learned that the checks of Meyers & Co. were not good. Defendant then charged the two McCann checks back to plaintiff's account, returning them to him. Plaintiff brings suit to recover from the bank the amount so withdrawn by it from his account. *Held*, that the credit in the pass book was equivalent to a payment to plaintiff in cash of the amount of the checks. *Bryan* v. *First National Bank of McKees Rocks* (1903), — Pa. —, 54 Atl. Rep. 480.

The decision in this case is supported by the weight of authority. *Levy* v. *Bank of the United States* (1802), 4 Dall. 234, 1 L. ed. 814, 1 Bin. 27; *Oddie* v. *National City Bank* (1871), 45 N. Y. 735, 6 Am. Rep. 160; *Bank of Selma* v. *Burns* (1880), 68 Ala. 267, 44 Am. Rep. 138. To these cases stands opposed the doctrine of *The National Gold Bank* v. *McDonald* (1875), 51 Cal. 64, 21 Am. Rep. 697.

CONFLICT OF LAWS—LEGITIMATION OF A BASTARD—STATUS FIXED BY DOMICILE OF HIS PARENTS.—Proceeding begun by the plaintiff for the legitimation of his son. Plaintiff and defendant were married at Milwaukee, July 1, 1893, and for four or five years previous thereto, and up to the marriage, they had lived and habitually cohabited together at Chicago, and during that time there was born to them the son in whose favor this proceeding of legitimation is brought. *Held*, that legitimacy is a status, and by the laws of Illinois the subsequent marriage of the parents legitimates their prior offspring, and that the removal of his parents hither could not have the effect to make him a bastard, and that the complaint stated no cause of action. *Fowler* v. *Fowler*, 131 N. C. 169, 42 S. E. Rep., 563, 59 L. R. A. 317.

The general current of authority favors the doctrine that when an illegitimate child has been legitimated by the subsequent marriage of its parents according to the laws of the state or country where the marriage takes place and the parents are domiciled, such legitimacy follows the child wherever it may go. *Miller* v. *Miller*, 91 N. Y. 315; *Straeder* v. *Graham*, 51 U. S. 10;